

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

NATERA, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 20-125 (GBW)
	)	(CONSOLIDATED)
ARCHERDX, INC., ARCHERDX, LLC and	)	
INVITAE CORP.,	)	
	)	
Defendants.	)	

**[PROPOSED] AMENDED SCHEDULING ORDER**

This \_\_\_\_ day of \_\_\_\_\_, 2022, the Court having ordered the parties to provide a revised form of scheduling order for the Court's consideration (D.I. 462, 484), and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation, or binding arbitration;

IT IS HEREBY ORDERED that:

1. Discovery Matters and Disputes Relating to Protective Orders.

(a) Any discovery motion filed without first complying with the following procedures will be denied without prejudice to renew pursuant to these procedures,

(b) Should counsel find, after good faith efforts – including verbal communications among Delaware and Lead Counsel for all parties to the dispute - that they are unable to resolve a discovery matter or a dispute relating to a protective order, the parties involved in the discovery matter or protective order dispute shall submit a joint letter in substantially the following form:

Dear Judge Williams:

The parties in the above-referenced matter write to request the scheduling of a discovery teleconference.

The following attorneys, including at least one Delaware Counsel and at least one Lead Counsel per party, participated in a verbal meet and-confer (in person and/or by telephone) on the following date(s): \_\_\_\_\_

Delaware Counsel: \_\_\_\_\_

Lead Counsel: \_\_\_\_\_

The disputes requiring judicial attention are listed below:

[provide here a non-argumentative list of disputes requiring judicial attention]

(c) On a date to be set by separate order, generally not less than forty-eight (48) hours prior to the conference, the party seeking relief shall file with the Court a letter, not to exceed three (3) pages, outlining the issues in dispute and its position on those issues. On a date to be set by separate order, but generally not less than twenty-four (24) hours prior to the conference, any party opposing the application for relief may file a letter, not to exceed three (3) pages, outlining that party's reasons for its opposition.

(d) Each party shall submit two (2) courtesy copies of its discovery letter and any attachments.

(e) Should the Court find further briefing necessary upon conclusion of the telephone conference, the Court will order it. Alternatively, the Court may choose to resolve the dispute prior to the telephone conference and will, in that event, cancel the conference.

2. Motions to Amend.

(a) Any motion to amend (including a motion for leave to amend) a pleading shall NOT be accompanied by an opening brief but shall, instead, be accompanied by a letter, not

to exceed three (3) pages, describing the basis for the requested relief, and shall attach the proposed amended pleading as well as a “blackline” comparison to the prior pleading.

(b) Within seven (7) days after the filing of a motion in compliance with this Order, any party opposing such a motion shall file a responsive letter, not to exceed five (5) pages.

(c) Within three (3) days thereafter, the moving party may file a reply letter, not to exceed two (2) pages, and, by this same date, the parties shall file a letter requesting a teleconference to address the motion to amend.

3. Motions to Strike.

(a) Any motion to strike any pleading or other document shall NOT be accompanied by an opening brief but shall, instead, be accompanied by a letter, not to exceed three (3) pages, describing the basis for the requested relief, and shall attach the document to be stricken.

(b) Within seven (7) days after the filing of a motion in compliance with this Order, any party opposing such a motion shall file a responsive letter, not to exceed five (5) pages.

(c) Within three (3) days thereafter, the moving party may file a reply letter, not to exceed two (2) pages, and, by this same date, the parties shall file a letter requesting a teleconference to address the motion to strike.

4. Case Dispositive Motions.

(a) All case dispositive motions were filed and briefing was completed under Judge Stark’s procedure as set forth under the prior Scheduling Order and amendments thereto. D.I. 60, 242. Pursuant to this Court’s Order (D.I. 463), by **October 17, 2022**, the parties will each submit a one-page letter ranking the grounds for summary judgment raised in its motions for summary judgment in whatever order it chooses, but with the understanding that once the Court

denies summary judgment as to any single ground raised in the motion, the Court will not address any summary judgment grounds that were ranked after that ground.

(b) Concise Statement of Facts Requirement. For each separate motion/ground for summary judgement, the moving party shall file no later than **October 18, 2022** a separate concise statement, not to exceed six (6) pages, which details each material fact which the moving party contends is essential for the Court's resolution of the summary judgment motion (not the entire case) and as to which the moving party contends there is no genuine issue to be tried. Each fact shall be set forth in a separate numbered paragraph and shall be supported by specific citation(s) to the record.

Any party opposing the motion shall file no later than **October 25, 2022** a response to the moving party's concise statement, not to exceed six (6) pages, which admits or disputes the facts set forth in the moving party's concise statement on a paragraph-by-paragraph basis. To the extent a fact is disputed, the basis of the dispute shall be supported by specific citation(s) to the record. Failure to respond to a fact presented in the moving party's concise statement of facts shall indicate that fact is not in dispute for purposes of summary judgment. The party opposing the motion may also include with its opposing papers a separate concise statement, not to exceed four (4) pages, which sets forth material facts as to which the opposing party contends there is a genuine issue to be tried. Each fact asserted by the opposing party shall also be set forth in a separate numbered paragraph and shall be supported by specific citation(s) to the record.

No later than **October 31, 2022**, the moving party shall file a response to the opposing party's concise statement of facts, not to exceed four (4) pages, on a paragraph-by-paragraph basis. Failure to respond to a fact presented in the opposing party's concise statement of facts shall indicate that fact remains in dispute for purposes of summary judgment.

(c) Ranking of Summary Judgment Motions. Pursuant to this Court's Order (D.I. 463), by **October 17, 2022**, the parties will each submit a one-page letter ranking the grounds for summary judgment raised in its motions for summary judgment in whatever order it chooses. The Court will review the party's summary judgment motions in the order designated by the party. If the Court decides to deny a motion filed by the party, barring exceptional reasons determined *sua sponte* by the Court, the Court will not review any lower ranked summary motions filed by the party.

(d) Oral Argument. Oral argument on the pending summary judgment and *Daubert* motions shall be held on **January 24, 2023** at 10:00 a.m. in Courtroom 6B.

5. Applications by Motion. Except as otherwise specified herein, any application to the Court shall be by written motion. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

6. Papers Filed Under Seal. In accordance with section G of the Revised Administrative Procedures Governing Filing and Service by Electronic Means, a redacted version of any sealed document shall be filed electronically within seven (7) days of the filing of the sealed document.

7. Courtesy Copies. The parties shall provide to the Court two (2) courtesy copies of filings (i.e., briefs, appendices, exhibits, declarations, affidavits etc.). Courtesy copies of appendices and exhibits should include hard tabs. This provision also applies to papers filed under seal.

8. Motions in Limine. Motions *in limine* shall not be separately filed. All *in limine* requests and responses thereto shall be set forth in the proposed pretrial order. Each SIDE shall be limited to three (3) *in limine* requests, unless otherwise permitted by the Court. The *in limine*

request and any response shall contain the authorities relied upon; each *in limine* request may be supported by a maximum of three (3) pages of argument, may be opposed by a maximum of three (3) pages of argument, and the side making the *in limine* request may add a maximum of one (1) additional page in reply in support of its request. If more than one party is supporting or opposing an *in limine* request, such support or opposition shall be combined in a single three (3) page submission (and, if the moving party, a single one (1) page reply), unless otherwise ordered by the Court. No separate briefing shall be submitted on *in limine* requests, unless otherwise permitted by the Court.

9. Pretrial Conference. On **April 25, 2023**, the Court will hold a pretrial conference in Court with counsel beginning at 3:00 p.m. in Courtroom 6B. Unless otherwise ordered by the Court, the parties should assume that filing the pretrial order satisfies the pretrial disclosure requirement of Federal Rule of Civil Procedure 26(a)(3). The parties shall file with the Court the joint proposed final pretrial order in compliance with Local Rule 16.3(c) and the Court's Preferences and Procedures for Civil Cases not later than seven (7) days before the pretrial conference. Unless otherwise ordered by the Court, the parties shall comply with the timeframes set forth in Local Rule 16.3(d)(1)-(3) for the preparation of the joint proposed final pretrial order.

The parties shall provide the Court two (2) courtesy copies of the joint proposed final pretrial order and all attachments. The proposed final pretrial order shall contain a table of contents and the paragraphs shall be numbered.

10. Jury Instructions, Voir Dire, and Special Verdict Forms. Where a case is to be tried to a jury, pursuant to Local Rules 47.1(a)(2) and 51.1 the parties should file (i) proposed voir dire, (ii) preliminary jury instructions, (iii) final jury instructions, and (iv) special verdict forms seven (7) business days before the final pretrial conference. This submission shall be accompanied by a

courtesy copy containing electronic files of these documents, in Microsoft Word format, which may be submitted by e-mail to gbw\_civil@ded.uscourts.gov.

11. Jury Trial. This matter is scheduled for a 5 day jury trial beginning at 9:30 a.m. on **May 8, 2023**, with the subsequent trial days beginning at 9:30 a.m. Until the case is submitted to the jury for deliberations, the jury will be excused each day at 5:30 p.m. The trial will be timed, as counsel will be allocated a total number of hours in which to present their respective cases.

12. Judgment on Verdict and Post-Trial Status Report. Within seven (7) days after a jury returns a verdict in any portion of a jury trial, the parties shall jointly submit a form of order to enter judgment on the verdict. At the same time, the parties shall submit a joint status report, indicating among other things how the case should proceed and listing any post-trial motions each party intends to file.

13. Post-Trial Motions. Unless otherwise ordered by the Court, all **SIDES** are limited to a maximum of 20 pages of opening briefs, 20 pages of answering briefs, and 10 pages of reply briefs relating to any post-trial motions filed by that side, no matter how many such motions are filed.

SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2022.

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The Honorable Gregory B. Williams  
United States District Judge

EVENT	DEADLINE
Letters ranking summary judgment grounds/motions	October 17, 2022
Concise statements of fact for summary judgment grounds/motions	October 18, 2022
Responses to concise statements and concise statements of additional facts	October 25, 2022
Moving party's response to opposing party's concise statements	October 31, 2022
Hearing on summary judgment and Daubert motions	January 24, 2023, at 10:00 a.m.
(i) proposed voir dire, (ii) preliminary jury instructions, (iii) final jury instructions, (iv) special verdict forms	April 14, 2023
Joint proposed final pretrial order	April 18, 2023
Pretrial conference	April 25, 2023 at 3:00 p.m.
5-day jury trial	May 8, 2023 at 9:30 a.m.